

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Consideration of BellSouth Telecommunication, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996

Docket No. 960786-TL  
Filed: September 23, 1997

POST-HEARING BRIEF OF SPRINT AND SMNI

Sprint Communications Company Limited Partnership ("Sprint") and Sprint Metropolitan Networks, Inc. ("SMNI"), by and through their undersigned counsel and pursuant to the Commission's prehearing order in this docket entered August 22, 1997, submit their post-hearing brief of the evidence presented to the Commission in this docket.

Preliminary Statement

Sprint and SMNI will address only issues 3 and 3(a) in this brief. For all remaining issues, Sprint and SMNI adopt the brief of FCCA.

References to Exhibits in the record will be designated ("Exhibit \_\_\_ [with further reference to page number or late-filed exhibit number]"). References to the testimony in the record

ACK transcript will be designated "(Tr. Vol. \_\_\_, Page \_\_\_)".  
AFA  
APP  
CAE  
CMI Career  
CTR  
EAG  
LEG  
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OPC  
RCH  
SEC  
WAS  
OTH  
References to the Telecommunications Act of 1996, Public Law 104-104, shall be as "The 1996 Act" or "The Act".

Introduction

Congress has given this Commission a unique and critical role to play in the review of BellSouth's application to enter the interLATA toll market. The consultative role created by Section 271(d)(2)(B) is essentially one of a finder of fact - to determine

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["verify"] whether the checklist of 14 items in Section 271(c)(2)(B) has been met. In other words, to render findings as to whether the 14 indices of a truly competitive local telephone market are in place.

As the FCC explained in its Ameritech<sup>1</sup> decision:

In order to fulfill this role as effectively as possible, state commissions must conduct proceedings to develop a comprehensive factual record concerning BOC compliance with the requirements of section 271 and the status of local competition . . . . We believe that the state commissions' knowledge of local conditions and experience in resolving factual disputes affords them a unique ability to develop a comprehensive, factual record regarding the opening of the BOCs' local networks to competition. Ameritech, ¶ 30.

Unlike the Commission's policy-oriented judgments called for in the LEC/ALEC arbitration cases under Section 252(b) of the 1996 Act, here the Commission's job is to obtain facts which will give it, and the FCC, the answer to whether the competitive checklist of Section 271(c)(2)(B) has been fulfilled. As exclusively a fact finder, the Commission should place the most probative weight upon the true fact witnesses, and not upon the regulatory witnesses of BellSouth who parade from state to state; they are long on BellSouth declarations of policy, practices and procedures - as in Mr. Milner's 86 volumes - but short on real-life facts. The Commission must look beyond those binders<sup>2</sup>, dozens of interconnec

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<sup>1</sup> In the Matter of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, CC Docket No. 97-137; Memorandum Opinion and Order (August 19, 1997).

<sup>2</sup> AT&T witness John Hamman perhaps most vividly cut through the glitter and apparent volume of the "86-volume facade" when he

tion agreements and SGAT filed by BellSouth after the close of the hearing<sup>3</sup>, to the question of whether the local market in Florida is truly and effectively open to viable, robust competition - using the 14 checklist items as a guide. Sprint submits that the answer to the question is patently clear: NO.

Two instances during the hearing perhaps best demonstrate the difference between BellSouth regulatory witnesses and true fact witnesses. First, BellSouth Witness Gloria Calhoun, is the witness proffered to show that BellSouth's OSS elements are available to ALECs on a nondiscriminatory basis. The most fundamental element of that issue is how ALEC utilization of OSS functionality compares to BellSouth's own use of OSS functionality. During her intensive testimony attempting to make this pertinent comparison, Ms. Calhoun repeatedly gave her standard disclaimer that she is "not a customer service representative" and, therefore, can't nimbly use the OSS systems or answer all of the questions posed (Tr. Vol. V, page 1241).

If BellSouth wanted the Commission to have the best evidence available to meaningfully compare the ALEC OSS functionality - basically with LENS, EDI and EXACT - with BellSouth's own use of the OSS systems via RNS and DOE, why didn't it bring a customer service representative witness to demonstrate the use of RNS and

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showed the Commission the actual, pertinent pages in the N.I.D. Binder - out of 1447 pages in the binder, only 32 pages actually pertained to the N.I.D.! (Tr. Vol. 24, page 2704-2705.)

<sup>3</sup> BellSouth Late-Filed Exhibit No. 125.

DOE systems? Then a true comparison could be made by this Commission, based on its first-hand observation of both ALEC and BellSouth's systems.

Secondly, Mr. Scheye went to great lengths to convince the Commission that BellSouth now has the ability to appropriately record and accurately render, via mechanized systems, billings for all UNEs, including local switching. Yet, when he later proclaimed BellSouth's solution to the billing problem (Tr. Vol. 16; pages 1736-1738), it turned out he had not even spoken directly to anyone in the billing department. He instead had second- or third-hand (hearsay!) accounts of the latest developments on BellSouth's billing procedures. Again, if the local switching billing is a crucial, and admittedly difficult, issue why didn't BellSouth bring before the Commission a hands-on, front line employee who could give the Commission a first-hand explanation and, if necessary, demonstration on this critical issue?

Again, the pervasive, overriding thread that runs throughout each of the critical 14 checklist item issues is whether the local market is truly and effectively open. Perhaps FCC Commissioner Quello put it as plainly and clearly as possible:

To the Bell Operating Companies . . . You will open your markets to competitors, and in return you will become competitors in other markets. The rules we adopt today will enable you to do both things. What they will not enable you to do is avoid the first, but obtain the second. . . .<sup>4</sup> (Emphasis supplied.)

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<sup>4</sup> First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (August 8, 1996); separate Statement of

BellSouth has thus far avoided the first - open its local market - and therefore is not entitled to obtain the second - become an interLATA competitor.

### The Ameritech Order

The 1996 Act creates very important but distinct roles for the FCC and this Commission in this, the first stage of a two-pronged Section 271 proceeding. But, this Commission's role is one of consultant to the FCC based on its review, as fact finder, of the mountain of evidence presented in this docket; a role far different from that of arbitrator<sup>5</sup> in the Section 252 cases. The Commission's decision in this case is not appealable, as its findings go to the FCC only as a recommendation.

Thus, the Commission's job is to serve as consultant. In this framework, the FCC has taken the opportunity in the recent Ameritech decision to provide guidance to BellSouth and the other BOCs and to the State Commissions, for subsequent Section 271 cases<sup>6</sup>. The FCC went out of its way to make its intent clear:

In today's decision, we provide a detailed, comprehensive roadmap that makes clear what Bell Operating Companies (BOCs) must do in order to satisfy the open market checklist enacted by Congress in the Telecommunications

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Commissioner James H. Quello.

<sup>5</sup> The Eighth Circuit has made clear the State Commissions' preeminent role as arbitrator in cases under Section 252 of the Act, especially as to setting interconnection rates. In those cases, the FCC has no oversight or review, as appeals are taken to the U.S. District Courts.

<sup>6</sup> BellSouth, of course, urges the Commission to disregard the FCC's decisions. (Tr. Vol. 1, pages 60-61; J. Marks' opening statement.)

Act of 1996. . . . This Order describes in great detail the steps the BOCs must take to satisfy Congress' checklist. (Ameritech; Separate Statement of Chairman Reed Hundt.)

Although today's Order . . . rejects Ameritech's application to enter the long distance market in Michigan, I am pleased that it provides Ameritech and other Bell operating companies with clear guidance on the Commission's 271 review process. (Ameritech; Separate Statement of Commissioner James H. Quello.)

Thus, the Ameritech decision is less a matter of precedent than it is practical guide of how the Commission will treat BOC 271 applications as this one of BellSouth. To best fulfill its consultative role in this case, the Commission cannot ignore the Ameritech roadmap provided by the FCC. Indeed, by ignoring Ameritech, this Commission would be "abdicating" its key role, on behalf of the consumers of Florida, to provide meaningful consultation to the FCC. A decision by this Commission that ignores the Ameritech principles will be a nullity, and of no benefit to BellSouth, the intervenors and the consumers of Florida.

### ISSUE 3

Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC?

#### Argument

Just as in the Ameritech application before the FCC, BellSouth "has not demonstrated the access to OSS functions that it provides to competing carriers for ordering and provisioning of resale services [and for UNEs] is equivalent to the access it provides to itself".<sup>7</sup>

This Commission's analysis of the OSS issue need not address any notions of BellSouth motive, strategy, intent or other subjective consideration; such notions are irrelevant. The OSS issue, as with the balance of the UNEs access issues, is again one of fact. Either the ALEC access to OSS functions are at parity with BellSouth's own access, or they are not. Indeed, one might presume that BellSouth's intent or goal is to provide the level of access to OSS functions and other UNEs that will pass muster under Section 271, and go not one step further. That is its prerogative, and its right, and is of no concern to this Commission.

Yet, the overwhelming evidence in the record before this Commission demonstrates that the Section 271 mandated parity in access to UNEs has simply not been achieved. Some of the many indicia of the lack of that parity are as follows:

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<sup>7</sup> Ameritech, at paragraph 128.

1. The BellSouth interfaces for ALECs are not fully deployed and tested, and are only interim solutions. The interfaces currently only support certain products, features and service order parameters. (Tr. Vol. 23, pages 2544, 2565; Sprint/SMNI witness Closz.)

2. Until the ALEC interfaces are fully deployed and tested in a real-world operating environment, their ability to provide parity will be unknown. (Tr. Vol. 23, pages 2544-2545, 2573; Sprint/SMNI witness Closz.)

3. The ALEC interfaces, as to some UNEs, do not provide flow-through directly to BellSouth's own electronic OSS systems, thereby requiring manual rekeying of information or other intervention which creates significant opportunity for error. (Tr. Vol. 23, pages 2573-2574; Sprint/SMNI witness Closz.)

4. The need for manual intervention in OSS functions increases the odds that errors will be made. (Tr. Vol. 12, pages 1422-1423; BellSouth witness Calhoun.)

5. BellSouth regularly misses its commitment to SMNI to notify SMNI of order problems within 48 hours of their receipt. (Tr. Vol. 23, page 2576.)

6. SMNI ordered an unbundled local loop; BellSouth twice issued incorrect internal orders resulting in an 18-day installation interval.) (Tr. Vol. 23, pages 2576-2577; Sprint/SMNI witness Closz.)

7. On numerous occasions BellSouth customers, in the process of being converted to a customer of SMNI, have been taken out of



service before service to SMNI is provisioned; typically these are instances where BellSouth has been unable to stop disconnect orders from processing when a SMNI cut-over is delayed. (Tr. Vol. 23, page 2577; Sprint/SMNI witness Closz.)

8. BellSouth notified SMNI, on a Friday before a Monday installation date, of a facilities problem related to service of a new SMNI customer, resulting in the customer being without any service on the Monday and having service with only two of fourteen lines on Tuesday. (Tr. Vol. 23, page 2577; Sprint/SMNI witness Closz.)

9. On four separate occasions between May and August 1997, BellSouth system errors have interrupted number portability for SMNI customers resulting in the customers being unable to receive calls to their "BellSouth" ported number; these BellSouth system errors are symptoms of major flaws in BellSouth's underlying permanent system processes, processes which are obviously in a highly developmental state. (Tr. Vol. 23, pages 2577-2578; Sprint/SMNI witness Closz.)

10. Customers with multiple PBX trunks have customer service records in excess of 50 pages, and only the first 50 pages of a customer's CSR records can be viewed using the BellSouth LENS interface. (Tr. Vol. 23, pages 2545, 2590, 2592; Sprint/SMNI witness Closz; Tr. Vol. 12, page 1121; BellSouth witness Calhoun.)

11. SMNI presently uses the EXACT interface to order UNEs, including unbundled loops and local number portability, at the express direction of BellSouth's account teams, (Tr. Vol. 23, pages

2593-2594; Sprint/SMNI witness Closz) and the EXACT interface does not permit mechanized ordering.

12. Sprint's account team, as late as July-August 1997, has recommended to SMNI that it not use the EDI interface to order UNEs, but rather wait until the end of 1997 when the LENS system is promised to accommodate mechanized ordering for some UNEs including loops and local number portability. (Tr. Vol. 23, pages 2594-2595; Sprint/SMNI witness Closz.) Ms. Calhoun confirmed such LENS enhancements are planned. (Tr. Vol. 13, pages 1402-1403; BellSouth witness Calhoun.)

13. Conversion of a customer's service from BellSouth to SMNI, requires close communication and coordination of activities between SMNI and BellSouth; yet, BellSouth has failed to respond since November 1996 to SMNI's request for pre-cutover procedures, and BellSouth has never asked SMNI for dial tone to be provided earlier in the cutover process. (Tr. Vol. 23, pages 2601, 2603; Sprint/SMNI witness Closz.)

14. Even small differences in functionality between BellSouth internal OSS systems and an ALEC's access to those OSS systems can have significant impact on the ALEC's ability to provide a customer with the same experience that BellSouth provides its own customers. (Tr. Vol. 23, page 2545; Sprint/SMNI witness Closz.)

15. Until electronic access to CSRs [and other OSS functions] is tested in a real world operating environment, and substantial numbers of customers are actually served using the functionality,

a true comparison for parity is not possible. (Tr. Vol. 23, page 2545; Sprint/SMNI witness Closz.)<sup>8</sup>

16. Every contact with a customer is a marketing opportunity (Tr. Vol. 12, pages 1262-1263; BellSouth witness Calhoun); therefore, ALECs must have full and immediately access to CSRs for even the simplest resale "switch as is" transaction in order to have true parity with BellSouth. (Tr. Vol. 23, pages 2546, 2566; Sprint/SMNI witness Closz.)

17. Orders for UNEs such as loops, ports and local number portability, whether by LENS, EDI or EXACT, do not flow through to BellSouth's OSS systems and thus all require manual intervention and are the functional equivalent of submitting the orders by fax, unlike BellSouth internal orders. (Tr. Vol. 23, page 2546; Sprint/SMNI witness Closz); Tr. Vol. 12, pages 1316, 1409-1410; BellSouth witness Calhoun.)

18. EDI and LENS are not integrated systems; the pre-ordering and ordering functions of BellSouth's RNS and DOE systems are both integrated (Tr. Vol. 12, pages 1420, 1436; BellSouth witness Calhoun.)

19. BellSouth's billings to SMNI for network elements have contained errors each month, requiring SMNI personnel follow-up and

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<sup>8</sup> A graphic example of the result of real world experiences was displayed in Ms. Calhoun's cross-examination when an incorrect due date was produced by BellSouth's LENS system in the Firm Order made (Tr. Vol. 12, page 1327; BellSouth witness Calhoun, Exhibit 48. Only the pressure of real life utilization allows bugs or deficiencies to be discovered and problems solved; but a system in the process of such real life testing does not provide parity.

subsequent billing adjustments (Tr. Vol. 23, page 2558; Sprint/SMNI witness Closz.)

20. Section 271 parity in providing access to UNEs means that ALECs can actually buy the UNEs "right now in realtime in the quantities that [our] customers are going to expect us to provide. (Tr. Vol. 24, page 2694; AT&T witness Hamman.)

21. In billings for four test lines - with AT&T employees as live customers, BellSouth cannot provide AT&T adequate detail for usage of UNEs. (Tr. Vol. 24, page 2699; AT&T witness Hamman.)

22. Contrary to witness Robert Scheye's testimony that no ALECs have requested billing detail needed for billing access charges to IXCs (BellSouth witness Scheye), AT&T has requested such billing detail for well over one year and BellSouth has been unable or unwilling (in fact it has "refused") to provide that billing detail. (Tr. Vol. 24, page 2711, AT&T witness Hamman).

23. BellSouth is not able to provide selective routing (i.e., for directory assistance) (Tr. Vol. 24, pages 2752-2755; AT&T witness Hamman; Hearing Exhibit 97.

24. In the Inquiry Mode, LENS requires new entrants to validate addresses repeatedly to perform various ordering functions (Tr. Vol. 26, page 2911; AT&T witness Bradbury; Tr. Vol. 12, pages 1287, 1300; BellSouth Witness Calhoun.)

25. An ALEC order for unbundled loops and number portability entered via EDI does not flow through as an entirely mechanized order, but is delivered to the LCSC for processing. (Tr. Vol. 11, pages 1234, 1237; BellSouth witness Calhoun.)

26. A telephone number selected by an ALEC in the inquiry mode of LENS must be written down by hand or otherwise preserved to be re-entered when placing an EDI order (Tr. Vol. 11, page 1281; BellSouth witness Calhoun).

27. A demonstration of BellSouth's LENS system produced an error message: "start a new session or press the back key to resume operation" that BellSouth's technical witness Calhoun had seen once or twice in the past but could neither explain nor solve. (Tr. Vol. 11, pages 1300-1304; BellSouth witness Calhoun.)

28. If a BellSouth customer representative is told by a new customer that they want to select U.S. West as its IXC, the representative simply types U.S. West into the RNS screen and the system will display the U.S. West carrier and code; the LENS system will not provide that capability to ALECs, requiring the ALEC to scroll through the entire, random list of IXCs until U.S. West appears (Tr. Vol. 11, page 1293; BellSouth witness Calhoun).

29. Order rejects (requiring additional information) in EDI go to the LCSC, with follow-up communications to the ALEC by telephone or facsimile; BellSouth system order rejects in RNS and DOE go electronically to a BellSouth Order Correction Group. (Tr. Vol. 12, pages 1318-1319; BellSouth witness Calhoun.)

30. Ms. Calhoun did not know whether BellSouth's ALEC ordering system is capable of accepting and generating an order for a specific, combined loop and port to serve a specific customer. (Tr. Vol. 12, pages 1339-1340; BellSouth witness Calhoun.)

31. BellSouth began to provide CABS billing data for resold services to MCI and AT&T on a test basis in July 1997, and the provision of that data is still in the testing phase. (Tr. Vol. 12, pages 1389-1390; BellSouth witness Calhoun.)

32. The ordering capabilities of the LENS system do not yet support the full range of functions of EDI (Tr. Vol. 12, pages 1406-1407; BellSouth witness Calhoun), and thus does not meet the Section 271 parity requirements.

33. BellSouth's technical witness Calhoun, whose testimony is that the LENS and EDI interfaces provide OSS access in parity with BellSouth's own RNS and DOE interfaces, has never personally observed LENS or EDI in use by ALECs, never observed LENS in use where a customer's service was actually converted to an ALEC, and did not attend the August 27 live demonstration of RNS and DOE less than two before the start of this hearing. (Tr. Vol. 12, pages 1283, 1405-1406, 1421; BellSouth witness Calhoun.)

34. Only on the final, due date LENS screen, in the Firm Order mode, is an ALEC able to determine whether there are facilities actually in place to serve a given location (Tr. Vol. 12, page 1422; BellSouth witness Calhoun), thereby limiting its ability to establish a due date with the customer.

35. The information obtained by an ALEC in the LENS Inquiry mode, including customer service records, does not automatically populate the appropriate fields on the LENS firms order mode. (Tr. Vol. 12, page 1435; BellSouth witness Calhoun.)

36. BellSouth service representatives have the ability to access pending orders in both RNS and DOE, and can make changes to the original order by accessing an order update screen. (Tr. Vol. 12, page 1439; BellSouth witness Calhoun.)

37. In RNS, BellSouth representatives can access an order summary screen showing the full extent of the customer's order (Tr. Vol. 12, page 1441; BellSouth witness Calhoun).

38. RNS has a hold order button that allows BellSouth representatives to hold an order for up to 30 days (Tr. Vol. 12, page 1441; BellSouth witness Calhoun), the LENS and EDI interfaces have no similar hold buttons for ALECs.

39. Conversion of BellSouth customers to ICI resale service takes two working days if things work perfectly, and about one-third of the time two to four weeks when things do not work perfectly. (Tr. Vol. 27, page 3046; ICI witness Chase.)

40. On the order of 30% to 40% of the time, ICI does not receive FOCs and CSRs back from BellSouth within two weeks of placing an order. (Tr. Vol. 27, page 3055; ICI witness Chase.) BellSouth's response is that the orders should be placed by EDI or LES (Tr. Vol. 19, page 1116; BellSouth witness Calhoun.)

41. ICI has experienced numerous delays and other problems with orders to modify service add features) for current ICI customers. (Tr. Vol. 27, pages 3057-3058; ICI witness Chase.)

42. On May 1997, an ICI customer, electing to switch back to BellSouth due to BellSouth delays in processing a move of service address, was converted back to BellSouth on May 17, two days before

the installation date assigned to ICI for the original change of service address order. (Tr. Vol. 27, page 3060; ICI witness Chase.)

43. ICI has lost customers back to BellSouth as a direct result of BellSouth delays and errors in handling ICI orders. (Tr. Vol. 27, pages 3061-3063; ICI witness Chase).

44. Substantial delays of up to six weeks have been incurred by ICI in ordering T1 circuits from BellSouth. (Tr. Vol. 22; pages 2430-2431; ICI witness Strow.)

45. The BellSouth interfaces available to ALEC - LENS, EDI and TAFI - are new and undergoing many changes and modifications; BellSouth is not able to timely inform ALECs of changes to the interfaces (Tr. Vol. 22, page 2431; ICI witness Strow). SMNI learned of some of the changes by reading the testimony of BellSouth witnesses in this docket. (Tr. Vol. 23, page 2567; Sprint/SMNI witness Closz.)

46. The AT&T and MCI negotiated interconnection agreements with BellSouth require BellSouth to provide machine to machine interfaces (Tr. Vol. 25, page 2812; AT&T witness Bradbury).

47. The LENS preordering functionality, as a separate interface not integrated with the EDI ordering interface, does not afford true direct electronic - machine to machine - interfaces (Tr. Vol. 25, pages 2822-2823; AT&T witness Bradbury).

48. LENS does not provide on-line, front end edits of the same extent and quality as the BellSouth RNS and DOE systems; an edit that only looks for the presence of data in required fields is



not in parity with BellSouth's systems. (Tr. Vol. 25, pages 2824-2825; AT&T witness Bradbury).

49. Because LENS does not afford machine to machine electronic interface, an ALEC representative must manually record preordering information obtained from LENS for manual or, at best, computer cut and paste, input into an EDI order. (Tr. Vol. 25, pages 2840, 2889-2890); AT&T witness Bradbury.)

50. ALEC's using LENS in the Inquiry mode do not have the equivalent access to preordering functions as in the Firm Order mode or as BellSouth's retail environment. (Tr. Vol. 25, pages 2897-2898; AT&T witness Bradbury.)

51. While BellSouth may manually gather preordering information for complex services, it can then input orders for complex services directly and electronically into BellSouth OSS system; ALECs do not have that same ordering capability. The BellSouth employees serving in the role of ALEC account team thereby become a bottleneck restricting an ALEC's ability to efficiently and non-discriminately utilize the OSS functionality. (Tr. Vol. 25, pages 2898-2899; AT&T witness Bradbury).

Perhaps the most telling evidence as to the introduction of LENS and its role in BellSouth's attempt to provide OSS functionality to meet the Section 271 checklist came from BellSouth's project manager for the LENS program. (Tr. Vol. 25, page 40; AT&T witness Bradbury.) BellSouth's Cassandra Daniels wrote to AT&T on May 19,

1997, following an introductory demonstration of LENS, describing the LENS system thusly:

. . . LENS is a newly developed system, and as such will require several iterations of enhancements before it can be considered a mature system. It is our desire and goal to provide functionality that mirrors our own service centers, which will require multiple, and sometimes frequent changes to LENS.

\* \* \*

As with any new system, it will be at least 6-9 months before the firm order portion can be considered stable. With the exception of displaying zip code, adding the ATLAS confirmation number, providing the capability to allow CLECs to assign house numbers for unnumbered addresses, and adding some fields specific to neighborhood directories and directory closing dates, I believe the inquiry or preorder capabilities are stable. Adding zip code is scheduled for the June release and no dates have been determined for the other modifications.

(Ex. 99 - JB-3.)

A system that is not stable certainly cannot meet the checklist requirement under Section 271 to provide nondiscriminatory access to OSS functionality. Once more, unstable and immature systems cannot achieve the level of real world operational experience and stresses necessary to make a true determination of whether the OSS functionality has been made available to ALECs on a nondiscriminatory basis. BellSouth's provisioning of the entire OSS functionality might best be termed immature and less than stable. It does not meet the Section 271 requirement.

### ISSUE 3.A

Has BellSouth developed performance standards and measurements? If so, are they being met?

A more practical reading of this issue is whether BellSouth has developed standards and measurements to empirically demonstrate whether nondiscriminatory access is being provided (not, will be provided) and, if so, whether the data generated by those standards and measurements reflects the provision of such nondiscriminatory access. The answer to both of those questions is not only NO, but is of course not.

In order for there to be meaningful and realistic performance standards, the underlying systems must be in a fully implemented stage. These systems, as discussed above and even as described by Ms. Calhoun are in their infancy. The BellSouth LENS project manager described that system as not mature or stable (Ex. 99-JB-3).

Only when those systems are in full deployment, and placed under the operational stresses produced by real life near-capacity utilization, can all of the chinks and weak links of the system be detected. At that point, and only at that point, will BellSouth be able to define appropriate performance standards and measurements.

One wonders whether, in August 1997 and before the LENS Firm Order due date problem developed the last week of August (Ex. 46 - September 2, 1997 Baker letter) even the AT&T/BellSouth negotiated performance standards contemplated and would detect such a critical deficiency in the BellSouth OSS system

Despite Mr. Stacy's explanation in his testimony of early reports of ALEC related data, Ms. Cloz testified that SMNI has requested performance measurement information relative to BellSouth's Orlando operations. None have been provided (Tr. Vol. 22, page 2554; sprint/SMNI witness Cloz).

Mr. Stacy did produce (Ex. 51; WNS Ex. F) some preliminary data on ALEC resale provisioning and maintenance. However, that chart is misleading because it measures BellSouth's performance only after the resale order is completed in the BellSouth order system. The most critical, and competition stifling, disparity is in the preordering and ordering functions themselves. (Tr. Vol. 27, page 3077; ICI witness Chase - Rebuttal page 8). The Commission must not get caught up in data that overlooks the true issue of nondiscriminatory access to OSS functionalities.

The Commission might also want to see performance data that reflects the difficulties in obtaining effective access to OSS functionalities described by Ms. Cloz (including the actual service problems related in the correspondence attached to her testimony (Ex. 88), Mr. Chase, Ms. Strow and Mr. Ball.

Mr. Stacy's own testimony plainly shows that, at best, BellSouth's attempt to develop affective performance measurement identification and tracking "is in a highly development state". (Tr. Vol. 22, page 2569; Sprint/SMNI witness Cloz.) BellSouth reached an agreement with AT&T on performance measurements only on May 9, 1997, and has similar agreements with no other ALECs, (Tr. Vol. 14, pages 1485-1486; BellSouth witness Stacy, and even the

AT&T/BellSouth agreement does not include complete reporting requirements. The AT&T agreement also does not contain definitions of certain measurements, including "desired due date". (Tr. Vol. 14, page 1489; BellSouth witness Stacy.)

Mr. Stacy also explained that BellSouth has begun collecting data relating to the agreed upon performance measurements with AT&T, with the initial measurements to be produced in September. (Tr. Vol. 14, pages 1485-1486; BellSouth witness Stacy.) What better illustration of the premature status of the entire performance measurement issue could there be? The initial performance data is completed after the hearing. How can this Commission determine whether the performance standards demonstrate BellSouth's nondiscriminating access to its network, when the initial measurements have not been completed? It cannot.

## CONCLUSION

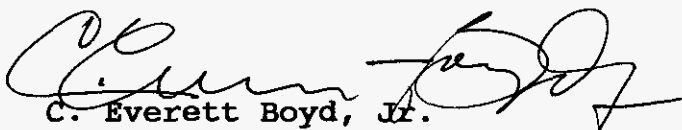
FCC Chairman Hundt boiled the 271 issue down to plain language:

The Order reaffirms where a Bell Operating Company has the will, there is a way. Any BOC that wishes to take the steps necessary to follow the roadmap will have the opportunity to enter the long distance market. This is the bargain Congress struck in the Telecom Act: when a BOC has reliably, practically and full opened its local market to competition and permanently allowed competitors fair access to the economies of scale and scope it generated during the previously monopoly era, it should be permitted to enter the long distance market (emphasis added). Ameritech; Separate Statement of Chairman Reed Hundt.

BellSouth has made a beginning down the road, but under no stretch of hyperbole has its local market been reliably, practically and fully opened. Local competition in Florida is in its infancy, a developmental stage that does not satisfy the 271 requirement for real competition, or even a real opportunity for competition. Great strides have been made, but there is a long way to go. BellSouth's application must be denied.

DATED this 23<sup>rd</sup> day of September, 1997.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I CERTIFY that a copy of Sprint's Post-Hearing Brief has been hand delivered to Nancy White, c/o Nancy Sims, BellSouth Telecommunications, Inc., 150 South Monroe Street, Tallahassee, FL 32301, and a copy has been furnished by \*Hand Delivery or U.S. mail to the following parties, this 23<sup>rd</sup> day of September 1997:

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